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Thomas R. Kennedy

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Kennedy: The Plastic Jungle  
**THE PLASTIC JUNGLE**

By Thomas R. Kennedy\*

**INTRODUCTION**

Tony Benitez of Tampa, Florida, was never able to use either of his unsolicited credit cards. One of his credit cards was a Master Charge card which he could have used to finance a trip to Europe or buy a new wardrobe. Tony is five years old and he can't sign his own name, although his credit rating is excellent according to the bank that mailed the credit cards to him.<sup>1</sup>

Roger Gelpey of Marblehead, Massachusetts, was able to use his unsolicited credit card. He bought a dollar tie after he had been turned down for a three hundred dollar loan. He is nine years old.<sup>2</sup>

A Lima, New York, widow didn't buy anything with her unsolicited credit card. She had never received it. Someone else used it and she received a bill for \$1,661. She is 96 years old and leaves her house once a month to cash her social security check of \$114.<sup>3</sup>

The stealing as well as the mailing of unwanted and unsolicited credit cards is a big business. In Brooklyn, New York, according to testimony by District Attorney Eugene Gold before the Federal Trade

\*Counsel, Postal Operations Subcommittee, Committee on Post Office and Civil Service, U. S. House of Representatives; B.A. Carroll College; LL.B., University of Montana; Member of the bar of Montana and U. S. Supreme Court.

<sup>1</sup>England, "Mass Mailing Keys Credit Card Operation," *Christian Science Monitor*, November 4, 1969.

<sup>2</sup>United Press Release, *Los Angeles Times*, October 22, 1969. See also England, *op. cit.*

"In the past month, member banks of the New England Bankcard Association, Inc. (NEBA) have mailed over two million unsolicited master charge cards to customers. This practice has been common in other areas."

"Robert C. Rier, President of NEBA, defends the practice. 'Each bank decided from their own accounts who would get cards,' he said of the operation here. 'We spent months and months to do the proper thing. In Chicago, they literally handed them out on the street.'"

Subcommittee staff study on Chicago incident. Testimony of Eric E. Bersten, professor of law, University of Iowa, before Subcommittee on Financial Institutions of the Committee on Banking and Currency, U. S. Senate, 90th Congress, October 10, 1968, pp. 90-128. Mrs. Betty Furness, Special Assistant to the President for Consumer Affairs, p. 63, October 10, p. 64 same committee.

The reference to Chicago by Mr. Rier, referred to the first mass mailing engaged in by American Banks of unsolicited credit cards. They picked the Christmas rush of 1966 to begin this practice. In addition, the Chicago banks are quite competitive and they all sought to build up the most massive lists possible in order to convince merchants that the credit plan individuals were trying to sell individual merchants was the best. Large numbers of cards were stolen. Credit cards were sent to children and the deceased and entire neighborhoods were flooded with the new bankcards from rival Chicago banks. One man received 18 credit cards from the same bank addressed to himself and each of his sons, aged 9, 11 and 13. The Chicago banks had issued millions of credit cards during the height of the 1966 Christmas rush.

<sup>3</sup>*New York Times*, November 26, 1969, "State Attorney General Louis J. Lefkowitz, reported another incident yesterday, which he said should dispel any doubt that the legislature should pass a law to prohibit the forwarding of unsolicited credit cards."

Commission on September 9, 1969, twenty stolen credit cards were used to run up bills totaling \$175,000. An unsolicited credit card is easily used by organized crime because the person in whose name it is issued is unaware of its existence. Credit cards obtained through assaults are sent across the country for immediate use because the victim will realize immediately that his card has been stolen. In the case of a stolen unsolicited credit card, thieves may use it at leisure as it will take up to six weeks for the bills to arrive in the victim's mailbox.<sup>4</sup>

The losses that occur as a result of the mailing of unsolicited credit cards to adolescents,<sup>5</sup> alcoholics,<sup>6</sup> bankrupts,<sup>7</sup> and financially overburdened families are paid for by the general public in the form of higher prices.<sup>8</sup>

Individuals cannot pass on the expense of resisting erroneous claims against them as a result of the fraudulent use of unsolicited credit cards.<sup>9</sup>

What can a lawyer in Billings, Butte, Missoula or Great Falls tell his client when he has been billed because of the fraudulent use of an unwanted and unsolicited credit card which he never received?

### LEGAL LIABILITY AND THE LOST CREDIT CARD

A lawyer can advise his client that his legal position is strong. He can say that even if he requested the credit card and had been using it before it was lost he would be only liable for fraudulent use between the time of loss and the time of notification to the credit card company. Since he never received the unsolicited credit card and did not use it, he is not bound by the terms of any agreement which imposes any liability on him for fraudulent use. The credit card company will have to prove, if it brings suit, that the card had been used by the defendant in order to show that he is bound by any of the contract terms associated with

<sup>4</sup>Testimony of Gold, Eugene F., District Attorney, Kings County, New York, Transcript of Federal Trade Commission Hearings, September 10, 1969, p. 76. Testimony of Rotker, Seymour, Executive Assistant to District Attorney, Bronx County, New York, at hearings before Subcommittee on Postal Operations, U. S. House of Representatives, October 19, 1969, p. 114, unpublished transcript.

<sup>5</sup>Miraglia, "My \$10,000 Credit Card Binge," *Life*, October 26, 1959, p. 53. A 19 year old took a one month trip across the United States by means of an all purpose credit card. He purchased \$10,000 worth of goods and services, including U-Drive It cars, a silver mink coat for a girl friend, and a puppy for himself.

<sup>6</sup>McDonald, "Credit Cards—Our Funny Money," *Detroit News*, November 4, 1969, p. 1.

<sup>7</sup>Jackson, Royal E., Chief of the Bankruptcy Division, Administrative Office U. S. Courts, at Hearings before Subcommittee on Financial Institutions, Committee on Banking and Currency, U. S. Senate, October 9, 1968, p. 31 *et. seq.*

<sup>8</sup>*Ibid.*, p. 33.

<sup>9</sup>McDonald, *op. cit.*, In San Francisco, California, Mrs. Lucille Vitorelo received a bill for \$368.78 from a department store. A credit card in her name, sent without her knowledge or request, was apparently stolen from the mails. The store threatened to sue her for the unpaid bill, her credit rating was damaged and she had to pay a lawyer \$175 to prove she was not liable.

the use of the card. These terms are for the most part printed on the card. A comparison of the signatures on the charge slips with the actual signature of the client should clear the matter up.<sup>10</sup>

In addition, the defendant may allege negligence on the part of the merchant for not obtaining proper identification.<sup>11</sup>

The client could be advised that regardless of the abusive credit collection letters he has been receiving, credit card companies almost never bring such suits on the basis of unsolicited mailings as a matter of public relations and their poor legal position.<sup>12</sup>

<sup>10</sup>IF THERE IS NO CONTRACT placing liability for unauthorized purchases on one of the parties and if neither of the parties has been negligent or acted in bad faith, the credit card holder will not be liable even though he does not report the loss promptly. The only implied duty in the absence of a contract is to exercise due care in handling the card. *Thomas v. Central Charge Service Inc.*, 212 A.2d 533, (D.C. Municipal Court of Appeals 1965) 15 ALR 3rd 1983, in which a judgment for the plaintiff was reversed.

THE HOLDER MAY BE LIABLE for fraudulent use if he authorizes a third party to make purchases and such a state of facts raises a jury question as to liability. *Jones Store Co. v. Kelly*, 225 Mo. App. 833, 36 S.W. 2d 681 (1931).

UNDER A CONTRACT FOR COMPLETE LIABILITY on the part of a cardholder prior to giving the issuing company notice of loss such terms may be enforced according to a decision in New York in the case of *Texaco, Inc. v. Goldstein*, 34 Misc. 2d 751, 229 N.Y.S. 2d 51, aff'd 39 Misc. 2d 552, 241 N.Y.C.2d 495. The facts of this case involved not only the contract term which placed complete liability for fraudulent use on the cardholder but the credit card was on oil company credit card which had no identification but a card number and the court took the position that only the cardholder could save the company from loss by prompt notice.

In *Union Oil Company v. Lull*, 220 Ore. 412, 349 P.2d 243, (1960), the court relied on an analogy between a bank passbook where there is a duty by the issuer to ascertain the identity of the person presenting the passbook, even though a contract term existed which placed all liability for fraudulent use of the passbook on the holder, since the bank as an indemnitee has the duty of exercising reasonable care to protect the indemnitor.

On the other hand, a case involving a contract term placing all liability on the cardholder until surrender of the card was upheld in *Sonoco Mobil Oil Company v. Grief*, 10 App. Div. 2d 119, 197 N.Y.S. 2d 522 (1960).

The standard clause now used limits cardholder liability for fraudulent use until the card is surrendered or written notice is given the issuer that the card has been lost or stolen. Where a "hot list" of missing cards is issued by the credit card company and the merchant still accepts the card for credit, the contract between the merchant and the credit card company may require the merchant to assume liability. Bergsten, "Credit Cards: Distributing Fraud Loss," 77 *Yale Law Journal* 1418, 1420 (1968).

<sup>11</sup>In *Humble Oil and Refining Company v. Waters*, 159 S.2d 408 (1965), the one whose negligence occasioned the loss must bear the loss. In this case a card was mailed as the result of a telephone request from a person claiming to be a cardholder who had lost her credit card and was asking for a replacement. The replacement card was stolen from the cardholder's mailbox. The court held that it was negligent for the credit card company not to ascertain the identity of the caller and that the credit card had been obtained by fraudulent means.

<sup>12</sup>Pollack, Earl E., Attorney, Midwest Bank Card System, Inc., Postal Operations Subcommittee Hearings, U. S. House of Representatives, November 19, 1969, p. 153

With this advice in mind, can the case file be closed with an exchange of correspondence between the lawyer and the credit card company?<sup>13</sup> The answer is no.

*"AGREE, FOR THE LAW IS COSTLY"*<sup>14</sup>

Estimates of collections on unpaid credit card debts without suit vary from 30% to 50%.<sup>15</sup>

Financially responsible families would rather pay an unjust debt than have a lawsuit filed against them with the possibility of garnishment and/or a ruined credit rating, as well as possible difficulties resulting from telephone calls to the breadwinner's employer.

An average American family cannot afford the payment of legal fees in defending a lawsuit over an amount of money which may very well be less than the cost of a defense. A good credit rating is a matter of necessity in obtaining decent housing and, in the land of the automobile, transportation. Certainly no wage earner can afford the damage resulting from a garnishment which brings about the failure to meet monthly payments. Garnishments are the number one cause of bankruptcies.<sup>16</sup>

We live in a cashless society in the midst of a credit explosion and we may even see the end of personal checks as a regular means of payment. The debtor, because he lives from check to check and from monthly payment to monthly payment, is not in fact able to refuse to pay even unjust bills. Thus the law has not been kept in balance between debtor and creditor rights.

<sup>13</sup>The credit card transaction which we are discussing is new to the law and unique. It involves a credit card issuer, an honoring merchant who sells diverse products to cardholders. There is virtually no authority, judicial or statutory, that is controlling. The problems arising from the use of this device are discussed in Mafly & McDonald, 49 CALIF. L. REV. 459, 465 (1960). In addition, legislation has been enacted in each state but relating only to criminal penalties for fraudulent use. Montana's statute is R.C.M.1947, § 94-1823-1830.

<sup>14</sup>Agree, for the law is costly (William Camden: *Remains*), Evans, *Dictionary of Quotations*, p. 378.

<sup>15</sup>Half the issuers try to recover and are successful in 30% to 50% of their attempts. Interviews with managers of local bank credit card plan. Murray, "A Legal Empirical Study of Unauthorized Use of Credit Cards," 21 U. MIAMI L.REV. 811, 833, 834, (1967).

<sup>16</sup>Jackson, Royal E., Hearings on Bank Credit Card and Check Credit Plans, Subcommittee on Financial Institutions, Committee on Banking and Currency, U. S. Senate, p. 33, October 9, 1968. Subcommittee Staff Study, Postal Operations Subcommittee, U. S. House of Representatives. Filed, September 1969.

**WHAT'S THE PROBLEM?**

American consumer debt stood at \$5 billion dollars in 1945. Today consumer debt stands at \$118 billion and it is growing.<sup>17</sup> The expansion of consumer debt has now reached some final stage with the mass mailings of millions of credit cards with no credit check of the addressees.

Credit card companies charge merchants from 4% to 7% in discounting credit card bills. The credit card customer pays a monthly interest rate of 1½% or 18% a year as a charge on the portion of his bill that is unpaid at the end of 30 days. Some credit card companies in addition charge their customers fees for membership and additional services. The merchant may raise his prices to compensate him for the 7% discount on his sales.<sup>18</sup>

Many people derive an emotional satisfaction from credit card ownership. According to motivational research expert Dr. Ernest Dichter, the credit card is a "symbol of inexhaustible potency. . . . It gives its owner the wonderful feeling that he has Aladdin's omnipotence in thousands of famous restaurants, hotels and shops throughout the world, even though the chances are that he will never see the inside of a hundred of them."<sup>19</sup>

According to the National Petroleum News of March 1967 (Page 92), "American business is creating credit faster than certain Roman emperors minted money."<sup>20</sup> It seems that the flood of credit has created a cashless society, and at the same time easy credit for some items has led to limited credit for major items such as housing, and harsh collection procedures have resulted in order for some creditors to be the first in line to be paid by the overcommitted debtor.<sup>21</sup>

<sup>17</sup>Meade, Robert L., Legislative Director, Office of Special Assistant to the President on Consumer Affairs, at Hearings before Subcommittee on Postal Operations, U. S. House of Representatives, November 19, 1969, p. 88 *et seq.* Mr. Meade also stated that credit card losses are over \$100 million a year, stolen credit cards sell in New York City for at least \$50 and that mail fraud cases involving stolen credit cards has risen over 700% in the last four years. According to a United Press International release the consumer debt of the United States has jumped from a figure of \$110 billion that Meade used on November 19, 1969 to a figure of \$118 billion as of December 4, 1969 according to end of October figures issued by the Federal Reserve System.

<sup>18</sup>Patman, Wright, M. C., Chairman of the Banking and Currency Committee of the U. S. House of Representatives, before the Subcommittee on Postal Operations of the U. S. House of Representatives on October 29, 1969.

<sup>19</sup>Brean, "Charge Plans Make Cash Unstylish," *Life*, June 1, 1959, p. 120 *et seq.*

<sup>20</sup>"Credit Card Frauds: What You Need to Know About This Growing Danger," *National Petroleum News*, March 1969, p. 92.

<sup>21</sup>Jackson, Royal E., Hearings on Bank Credit Card and Check Credit Plans before the Subcommittee on Financial Institutions, U. S. Senate, October 9, 1968, p. 33.

### THE CREDITOR'S WEAPONS

In the new cashless society creditors have protected themselves by the expansion of a computerized, highly organized, and until now unregulated, credit bureau system.<sup>22</sup> With credit a necessity to consumers, and taking into account that one out of every five Americans moves each year, it is natural that this has come about.<sup>23</sup> There is a vast need for credit information and it is sold like any other commodity.<sup>24</sup>

Credit collection agencies have found a position of great power in the fact that almost every American is an employee in a highly industrialized society.<sup>25</sup> The loss of a job is far more devastating to Americans than the payment of a bill, just or unjust. The use of "garnishments" has become a perfected weapon, since almost no consumer can safely fail to meet his monthly payments without facing financial disaster.

In order to redress the balance to some extent it is vital that new regulatory legislation be passed by the Congress and State legislatures.

### THE GARNISHMENT SANCTION

Since garnishment is one of the chief sanctions against debtors, and the threat of garnishment is a means of collection of disputed bills, it is important to note, in reference to claims resulting from the fraudulent use of unsolicited credit cards, Public Law 90-321, better known as the "Truth in Lending" law.<sup>26</sup>

Title III of the Act entitled "Restriction of Garnishment" applies federal regulations to all garnishment proceedings and sets up federal standards for future proceedings. This title will take effect on July 1, 1970 (Sec. 504).<sup>27</sup>

The findings in section 301 of the Act stated that the unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit and that such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce; that the application of garnishment as a creditor's remedy frequently results in loss of employment by the debtor; and the resulting disruption of employment, production and consumption constitutes a substantial burden on

<sup>22</sup>Proxmire, William, U. S. Senator, Statement on Senate Floor, *Congressional Record*, November 6, 1969, p. S-13906.

<sup>23</sup>Wattenberg and Scammon, "This U. S. A.", p. 112. (1960 Census Figures)

<sup>24</sup>Lederberg, "Business Marketing Data Once Sold by Private Eye," *Washington Post*, August 2, 1969.

<sup>25</sup>*Supra* note 23, at 179.

<sup>26</sup>15 U.S.C. 1601, *et seq.*

<sup>27</sup>15 U.S.C. 1673.

interstate commerce. Further, "the great disparities among the laws of the several states relating to garnishment have in effect destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country."

The Secretary of Labor, through the Wage and Hour Division of the United States Department of Labor, shall enforce the provisions of the Act (Sec. 306).<sup>28</sup>

Section 303 limits the amount of wages that can be garnished through a percentage figure and/or a mathematical formula based on the Federal Minimum Hourly Wage prescribed by the Fair Labor Standards Act of 1938.<sup>29</sup>

Only 25% of the weekly wages of an employee would be subject to garnishment or the amount of disposable earnings for that week which exceeded thirty times the federal minimum hourly wage prescribed by section 6(a) (1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less. If wages are other than weekly wages, the Secretary of Labor by regulation shall set up a formula that achieves the same result.<sup>30</sup>

These restrictions do not apply to court orders for support, an order of any court in bankruptcy under Chapter xiii or any debt due for any state or federal tax. No court of the United States or of any state may make or enforce any order or process in violation of this section.<sup>31</sup>

Section 304 provides that no employer shall discharge an employee as the result of garnishment for one indebtedness, and willful violation of the section shall subject the employer to a fine of not more than \$1,000 or imprisonment for not more than one year, or both.<sup>32</sup> State laws which are more restrictive shall not be annulled.<sup>33</sup>

### THE CREDIT BUREAU SANCTION

A reporter for the Columbia Broadcasting System, claiming to represent a non-existent firm, obtained credit reports on 10 individuals out of a random list of twenty names. His investigation was the basis of a televised report on credit bureaus, which generally claim that their information is kept confidential.<sup>34</sup>

<sup>28</sup>15 U.S.C. 1676.

<sup>29</sup>29 U.S.C. 201, *et. seq.*

<sup>30</sup>15 U.S.C. 1673.

<sup>31</sup>15 U.S.C. 1675.

<sup>32</sup>18 U.S.C. 891.

<sup>33</sup>15 U.S.C. 1677.

<sup>34</sup>Williams, Harrison, U. S. Senator. Remarks, *Congressional Record*, November 6, 1969, p. 8-13909.



Credit bureaus have dossiers on 110 million Americans or almost the entire adult population of the United States. Most credit bureaus belong to the Associated Credit Bureaus of America, which has over 2,200 individual members serving 400,000 creditors in 36,000 communities. These credit bureaus issued 97 million credit reports in 1967. This information is freely transferable between the association's membership and the information is used for extensions of credit and employment purposes.<sup>35</sup> Massachusetts and New Mexico passed statutes regulating credit bureaus in 1969. Until this year, the only state statute regulating credit bureau activities was one passed in Oklahoma in 1916 and that was inadequate.<sup>36</sup>

Credit reports include such items as age, race, marital status, opinions of neighbors of personal habits as well as financial information. In addition information goes into credit reports and remains on file without being corrected or updated. Information is not evaluated and wholly false information has the same status as correct and relevant information.<sup>37</sup>

Senator Proxmire in his explanation of S.823, an amendment to the Consumer Protection Act, outlined seven problems and then gave seven solutions his amendment would provide.<sup>38</sup> These are shown below by enumerated paragraphs with the proposed S.823 solution in an indented letter paragraph.

1. Consumers do not know that they are being damaged by adverse credit reports.

(a) The bill provides that where a person is refused a loan, employment or insurance because of an adverse credit report, those who make the decision upon the written request of the disappointed applicant must disclose the name and address of the credit bureau from which they obtained the information. Present contracts between creditors and the bureaus forbid revealing the identity of the credit bureau. A person would then have the opportunity to correct misleading information in such credit files (Sec. 615).

2. A Consumer is rarely given access to his own file, even if he knows the name of the credit bureau which has it on record.

(a) Under the Proxmire bill, S.823, credit bureau reporting agencies must interview complaining consumers during normal business hours

<sup>35</sup>Proxmire, William, U. S. Senator. Remarks, *Congressional Record*, November 6, 1969, p. S-13905.

<sup>36</sup>Massachusetts General Laws, Ch. 93, amended by addition of Sections 44-47, 1969; New Mexico, 50-18 -2 through 6, 50-19-1, General Laws 1969, Ch. 259, Sec. 1; Oklahoma, 24 Oklahoma 81 through 85, 1910.

<sup>37</sup>Brenton, "The Privacy Invaders," p. 38, 43, 1964.

<sup>38</sup>Proxmire, William, U. S. Senator, explanation of amendment to the Consumer Protection Credit Act, *Congressional Record*, 6 November 1969, p. S-13905-07.

and on reasonable notice disclose all information in the consumer's file. A complaining consumer may bring one other person with him when he asks to examine his file. This could be helpful generally but especially so in poorer areas (Secs. 609-610).

3. Consumers have great difficulty in correcting innaccurate information.

(a) Debtors would, under S.823, have the right to file explanatory information or to have incorrect or unverifiable information deleted as the result of the right to demand reinvestigation of allegations. Frivolous consumer statements need not be included (Sec. 611).

4. Information in credit files is not kept confidential.

(a) Those who request credit reports must certify as to the purpose for which they are requested and agree not to use the information for any other purpose. A person who obtained a credit report under false pretenses would be subject to a fine of up to \$5,000 or imprisonment up to one year, or both (Sec. 619).

5. Credit bureaus gather highly personal information based on the subjective opinions of others, whether or not such information is relevant to credit standing.

(a) Investigations of a personal nature must be revealed to the consumer as well as the nature and scope of such investigation, if he makes a written request. His right to make such a written request must also be disclosed to him (Sec. 615b).

6. Public record information such as arrests are not updated and do not show eventual disposal of cases.

(a) This problem will be solved upon passage of the Proxmire bill (S. 823) by the requirement that public record information be kept up to date. If this cannot be done, the consumer must be notified that an inquiry has been made and of the identity of the person to whom a report was sent. The consumer would then have the opportunity to have updated information forwarded to the inquirer and the file corrected (Sec. 613).

7. Old information on past credit deficiencies is not updated to show improved performance on any regular basis.

(a) Section 605 provides that obsolete information from official records such as suits and judgments, unpaid tax liens, records of arrest, indictment, conviction and matters such as accounts placed for collection or charged to profit and loss, shall not be made part of consumer reports beyond 7 years. In the case of bankruptcies the limit is 14 years (Sec. 605a). Section 605b provides that transactions involving more than a principal amount of \$50,000 or more, the underwriting of life insurance policies involving a principal amount of \$25,000 or more, or the employ-

ment of any individual whose yearly compensation amounts to more than \$20,000, is exempt from these restrictions.

### **MASS MAILING KEYS CREDIT CARD OPERATIONS**

There are 300 million credit cards in use in the United States. About 1.5 million of these credit cards are stolen each year and the annual loss from fraudulent use has reached a figure of \$100 million.<sup>39</sup>

In an article in the *Christian Science Monitor*, entitled "Mass Mailing Keys Credit Card Operations," dated November 4, 1969, it was noted that "In the past month, member banks of the New England Bankcard Association, Inc. (NEBA), have mailed over two million unsolicited Master Charge Cards to customers. This practice has also been common in other areas." With large mailings of this kind, it is inevitable that unsolicited credit cards are stolen.<sup>40</sup>

The lead time given to thieves through the theft of unsolicited credit cards makes them valuable to them, not only in providing funds, but in providing identification.

As a direct result of hearings held in the Postal Operations Subcommittee of the U.S. House of Representatives, Congressman Arnold Olsen introduced H.R. 15103, which provides for restricted conditions for the mailing of credit cards.

#### *H.R. 15103*

Section 4001 of 39 U.S.C.A. would be amended upon passage of the Olsen bill by adding credit cards to the category of nonmailable matter under subsection (b). Subsection (c) contains the exceptions to the mandate of Subsection (b).

Subsection (c) provides that credit cards may be mailed:

- (1) by registered mail, return receipt requested, with restricted delivery to the person in whose name the card is drawn;
- (2) in response to a written application; and
- (3) the credit card bears a term on its surface, in eight point type, that liability for fraudulent use is assumed by the sender, unless the credit card bears a photograph and signature of the person in whose name the credit card is issued. In that case liability to the cardholder will be limited to \$50; and that

<sup>39</sup>Dallos, "Fighting Credit Card Fraud," *Washington Post*, December 7, 1969, p. 1.

<sup>40</sup>England, "Mass Mailing Keys Credit Card Operation", *Christian Science Monitor*, November 4, 1969.

(4) the sender agrees to pay an additional charge for any mailing returned to him covering the cost to the Department of such return as established by the Postmaster General.

A criminal fine of \$1,000 per mailing of each nonmailable card is added as a sanction in Subsection (d). Subsection (e) provides that nonmailable matter under the bill may be seized and disposed of as the Postmaster General shall direct in postal regulations.

The Olsen bill is a combination of approaches that are now before the Congress.

For example, Senator Proxmire's bill, S. 721, introduced for himself and Senators Dodd, Eagleton, Inouye, McGee, McIntyre, Mondale, Moss, Nelson, Yarborough and Young of Ohio, would amend Section 103 of the Truth in Lending Act (82 Stat. 146).

It would limit the liability of the cardholder for unauthorized use of an unaccepted credit card (Sec. 132). An accepted credit card is defined, in what will be a new subsection (1) of Section 103 of the truth in Lending Act (82 Stat. 146), as "any credit card which the cardholder has requested in writing or has signed or used, or authorized another to use." Also a "Renewal card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used;" and "A new credit card issued in substitution for an accepted credit card as a result of a change in the corporate structure or ownership of a card issuer shall be deemed to be an accepted credit card."

Section 2(b) of S.721 would be added to Section 105 of the Truth in Lending Act, and it would require that the Board of Governors of the Federal Reserve System shall prescribe regulations under which card issuers may issue credit cards not requested in writing by a prospective cardholder, in the matter of minimum credit standards for such prospective cardholders. The purpose being to limit overextension of credit by consumers and protect the financial stability of banks insured by the Federal Deposit Insurance Corporation.

#### *H.R. 13244*

This bill, introduced by Congressman James Hanley, Democrat of New York, provides that unsolicited credit cards must be sent by registered mail restricted to addressee only and that otherwise the mailings of unsolicited credit cards would be a criminal offense, subject to penalties of not more than two years imprisonment and/or a fine of not less than \$1,000, or both.

#### *H.R. 14346*

This bill, introduced by Congressman William Scott of Virginia, would bar unsolicited credit cards from the mail as being nonmailable. The criminal sanction in the Scott bill is a misdemeanor, with a maximum imprisonment of one year and a fine of not less than \$1,000, or both.

*H.R. 14897*

Congressman Glenn Cunningham, Republican of Nebraska, introduced H.R. 14897 which would require that all credit cards be forwarded by registered mail and bear the words on the envelope "credit card" or "unsolicited credit card—addressee may refuse" in the appropriate case.

*OBJECTIONS*

The Federal Reserve Board and the Credit Card industry object to all of these bills on the basis that there is no serious problem involved in the mailing of unsolicited credit cards that cannot be corrected by better screening of mailing lists.<sup>41</sup> They also maintain that the barring of unsolicited credit card mailings would prevent other credit card companies from entering the field because they cannot procure sufficient credit card holders to support a plan and solicit participation in a credit card plan by merchants unless large numbers of consumers have credit cards in their possession.<sup>42</sup> A bank that attempts to obtain cardholders by forwarding credit card applications received less than a 1% response. The same bank found that by mailing unsolicited credit cards a 19% use rate was established within a few months.<sup>43</sup>

The Olsen bill, H.R.15103, and the Cunningham bill, H.R. 14897, are objected to because of the cost of sending all credit cards by registered mail. Registered mail in the case of credit cards would cost \$.80 per piece, and a restricted delivery requirement would cost an additional \$.50, a total of \$1.30 per credit card mailing.<sup>44</sup>

*THE OLSEN POSITION*

Congressman Olsen and the authors of other bills are in agreement that unsolicited credit card mailings should in effect be barred from the mails because of the danger of theft. Credit cards are instant cash to persons who take them. They are sold, for instance, by criminals at

<sup>41</sup>Brimmer, Andrew F., Member of the Board of Governors of the Federal Reserve System, "New Horizons in Credit Card Banking", before Seattle Clearing House Association, September 23, 1969, p. 10.

<sup>42</sup>Martin, William Mc., Jr., Chairman of the Board of Governors of the Federal Reserve System, Letter to Chairman Robert N. C. Nix, M.C., dated October 28, 1969.

<sup>43</sup>McNeal, Edward J., Chairman of the Consumer Credit Issues Committee of the American Retail Federation, Proceedings Federal Trade Commission, Docket No. 215-20, p. 185, 186. "The Marine Midland Trust Company of New York made a promotional mailing soliciting applications for credit cards, and received a return of .007, of a total mailing of 33,000. An unsolicited mailing to a control group of 731 indicated that 139, or about 19%, had been used within a 90-day period."

<sup>44</sup>P.O.D. Notice 59, Domestic Postage Rates, Fees and Information, July 14, 1969.

rates from \$25 to \$500.<sup>45</sup> In our larger cities apartment mail boxes are regularly rifled and some postal employees who have fallen into the hands of loan sharks are induced to pilfer mailed credit cards as repayment.<sup>46</sup> The passage of credit cards through the postal system in locked mail bags with a limited number of individuals responsible for the entire process would cut down on the opportunity for such theft. A restricted delivery insures proof of receipt in the form of the cardholder's signature.<sup>47</sup>

Cardholder liability for fraudulent use of credit cards should be restricted and in the case of unsolicited credit cards eliminated altogether. The main concern of credit card companies is that without some liability cardholders will be negligent about prompt notice to the issuer of the loss.<sup>48</sup> While this is a consideration, a credit card carrying the photograph and signature of the cardholder would prevent

<sup>45</sup>United Press International, "Mafia Strikes Gold in Credit Cards," *St. Paul Sunday Pioneer Press*, November 26, 1967, p. 4.

Rotker, Seymour, Executive Assistant to the District Attorney, Bronx County, N. Y., Credit Card Hearings, Postal Operations Subcommittee, U. S. House of Representatives, November 19, 1969, p. 138. Transcript.

<sup>46</sup>United Press International, "Mafia Strikes Gold in Credit Cards," *St. Paul Sunday Pioneer Press*, November 26, 1967, p. 4. "Traditional 'Shylocking' techniques are also being streamlined by the shift from cash demands to credit. When syndicate collectors need to pressure these days," said Hantel (former District Attorney, Queens County, New York City), "they'll collect their pound of flesh not by beating on his noggin but by getting his credit cards . . . and if he doesn't have one, they tell him 'Get one, get two, get three . . .'"

Cotter, William J., Chief Postal Inspector, Credit Card Hearings, Postal Operations Subcommittee, U. S. House of Representatives, November 19, 1969, p. 112. Transcript.

<sup>47</sup>Cotter, William J., Chief Postal Inspector, Credit Card Hearings, Postal Operations Subcommittee, U. S. House of Representatives, November 19, 1969, p. 113, 114. Transcript.

"From the enforcement standpoint, unsolicited credit cards present several problems to the Postal Inspection Service. As unsolicited mailings are promotional mailings, regardless of the extent of screening the mailing lists, address reliability is apt to be lower in comparison with credit cards mailed in response to an application. Wrong deliveries, forwarding and multiple handling increase the exposure of an unsolicited mailing to theft and loss."

"As unsolicited mailings are unwanted by some percentage of the addressees, perhaps as high as 75%, that percentage of a given mailing is needlessly exposed to loss or theft in postal transit and otherwise until the cards are either destroyed or returned to their issuer."

"The addressee of an unsolicited card, not anticipating it, usually finds out about its misuse when he receives an invoice, perhaps six weeks after the date of mailing. The delay in initiating the investigative process is an impediment to its success."

"Postal employees and others can usually spot unsolicited mailings and one inclined to theft will reckon an unsolicited mailing as a safer and more desirable target than regular customer mailings."

<sup>48</sup>Pollock, Earl E., Attorney, Midwest Bank Card System, Inc., Credit Card Hearings, Postal Operations Subcommittee, U. S. House of Representatives, November 19, 1969, p. 153 et. seq. Transcript.

much of the fraudulent use of such cards.<sup>49</sup> Merchants would have to be grossly negligent to accept credit cards when they are being used by a third person. If a credit card company did perfect its credit cards so that the card itself identified the person seeking to make a purchase, it would seem reasonable that limited liability on the part of the cardholder be provided for in order to assure prompt notification of loss.

### SUMMING UP

The ending of unsolicited mailings is the issue on which the Members of Congress who have introduced bills and the Federal Reserve Board, the banks and the credit card companies cannot agree.

Unsolicited credit card mailings are under attack in the state legislatures, before the Federal Trade Commission, and before committees of the Congress. Thirteen states have already passed laws restricting unsolicited mailings and limiting liability for the fraudulent use of credit cards.<sup>50</sup> Most states have enacted criminal statutes for fraudulent use of credit cards.<sup>51</sup>

It is true that legislation banning unsolicited credit cards from the mail will stabilize the credit card industry insofar as new companies will find it difficult to enter the field. But the entry, beginning in 1966, of giant new bankcard operations has not resulted in competitive pricing or cost cutting on the part of credit card companies. Their charges for bills over 30 days are on the average 18% and that is attractive to those who enter the credit card business. The consumer has seen no benefit in lowered costs of this form of credit. In fact, there is every indication it has raised the cost of maintaining his family's budget. He continues to pay 1½% a month on his credit card purchases and most people seem to stretch out such purchases beyond the "thirty days to reality" period. In fact, this is the source of the great profitability of credit card operations. In addition, the discounts charged merchants for the sale of bills run up under the credit card plans are significant and are as high as 7%.<sup>52</sup> Moreover, the switching of funds from consumer loan

<sup>49</sup>H.R. 15103, Subsection (c), is not impractical or futuristic. The Marine Midland Grace Trust Company of New York advertises a Master Charge Card with photograph and signature and has done so for several years. Advertisement, *New York Times*, December 9, 1969, p. 36. The advertisement read in part: "If you grow a mustache we'll give you a new card." "We have to." "We're the only bank in town that puts your picture on the back of a charge card." "At no cost to you."

<sup>50</sup>See APPENDIX.

<sup>51</sup>See R.C.M.1947, § 94-1823 through 1830. These provisions applying criminal sanctions to the fraudulent use of credit cards are typical of statutes now part of the law in almost every state.

<sup>52</sup>Patman, Wright, M.C., Chairman of the House Banking and Currency Committee, in testimony before the Postal Operations Subcommittee of the U. S. House of Representatives, October 29, 1969, p. 9, referring to bank credit cards. "The bank is collecting 18% from the consumer and 7% from the merchant, or a total of 25% in the form of interest on discounts."

investment and small business loans has the tendency to raise interest rates on funds remaining and available for those purposes.<sup>53</sup>

The mailing of millions of unsolicited credit cards is a hard sell device that has been used to excess. The excesses of past operations do not justify continuing the same practices. What is more, building credit card operations on the basis of applications and the well thought out decisions of consumers to participate in one or two plans will cut down on ill-considered impulse spending, which is inflationary.

The main opposition to curbs on the mailing of unsolicited credit cards comes from the banking industry and the Board of Governors of the Federal Reserve System.<sup>54</sup> Bankcards are the latest arrivals in the credit card field. They are the "everything" cards and they have great competitive advantages over the more specialized credit card operations such as the airline companies and the oil companies who use credit cards as a selling device for their product; or the entertainment cards issued by the Diners Club and the American Express Company. Out of 300 million credit cards there are now 60 million bank credit cards in use.<sup>55</sup> The future belongs to the bank credit cards because they seem to be more convenient. Half of all the banks in the United States now offer a charge plan, either as part of a larger operation or individually.

Mr. Edward E. Bontema, president, Eastern States Bankcard Association, said in an Atlantic City Conference on Consumer Credit:

By 1975 almost every bank depositor in the U.S. also will be a bankcharge card holder. . . .

This will result in a decline in the volume of checks handled by banks and at the same time reduce the number of operations needed to process checks. . . .

According to a Federal Reserve System survey nearly 20 billion checks were processed in 1967. It cost almost \$4 billion to process those checks through some 20 operations.

It may be easy to understand why the banks of this country are in a hurry to establish credit card plans. But although a soft sell through applications may take longer, it will probably take place nonetheless. Legislation which protects the consumer from liability for fraudulent loss and which provides for credit cards which in fact do accurately

<sup>53</sup>Gulan, Jerome R., Legislative Director, National Federation of Independent Business, in testimony before the Postal Operations Subcommittee, U. S. House of Representatives, November 19, 1969, p. 83. "While the example of the South Atlantic States shows up the most dramatically, there appears to be a relationship between bank interest rates to independent business, and the degree of acceptance of bank credit cards."

<sup>54</sup>Martin, William Mc., Chairman of the Board of Governors, Federal Reserve System, in a letter to Chairman Robert N. C. Nix, M.C., Postal Operations Subcommittee, U. S. House of Representatives, dated October 28, 1969.

<sup>55</sup>Bontema, Edward E., President of Eastern States Bankcard Association, in *Philadelphia Evening Bulletin*, October 30, 1969, p. 10.



identify people are worth the trouble and time to the public. If the Olsen bill and bills like it delay the switch from checks to credit cards by protecting the consumer, it may be worth doing.

### CONCLUSION

Technology has changed forever the American's way of borrowing and spending by the mass issuance of the credit card.

The law develops much more slowly than technology. Legislation balancing the rights and duties of individuals and organizations, debtors and creditors, has developed very slowly. The time has come for the passage of such legislation.

The Truth in Lending Law, the Proxmire bill on arbitrary credit reporting, and the Olsen bill limiting liability resulting from lost credit cards and the mass mailing of unwanted credit, are all steps on a road toward protecting individual rights in a computer civilization.

This legislation and more like it must be enacted. The market place cannot become a lawless place where only the buyer has to beware. A computer civilization and the applied technology resulting therefrom will not reach its full promise if individuals do not share in that promise. A sense of fairness resulting from new rules in a new society is essential. A plastic jungle is not an alternative.

### APPENDIX

State Statutes Limiting Liability in matters involving the fraudulent use of unsolicited credit cards. (Citations from Commerce Clearing House Service. Consumer Credit Guide.)

#### ALASKA

Sec. 06.05.209. Issue of credit cards. A bank is not prohibited from issuing unsolicited credit cards or other similar credit granting devices but the bank may not hold the customer liable for charges made on a credit card or other device before its acceptance by the customer. Before an unsolicited card is considered accepted by the customer, the customer shall execute and furnish to the bank a written statement of acceptance. (Sec. 06.05.209, as added by Laws 1969, S.B. No. 173, approved May 5, 1969, effective August 3, 1969)

#### CALIFORNIA

Sec. 1718. (Definitions—Cardholder's liability limited.)

(a) as used in this section: (1) "Credit Card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by a card issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, either on credit or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder.

(2) "Accepted credit card" means any credit card which the cardholder requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used. A credit card issued in connection with a merger, acquisition, or the like of card issuers or credit card services in substitution for an accepted credit card shall be deemed to be an accepted credit card.

(3) "Card Issuer" means the business organization or financial institution which issues a credit card, or its duly authorized agent.

(4) "Cardholder" means the person or organization identified on the face of a credit card to whom or for whose benefit the credit card is issued by a card issuer.

(5) "Unauthorized use" means a use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(b) The cardholder is not liable for any unauthorized use of a credit card which has not become an accepted credit card.

(c) If an accepted credit card is lost or stolen after the credit card has reached the cardholder, and the cardholder notifies the card issuer within a reasonable time by telephone, telegraph, letter, or any other reasonable means after discovery of the loss or theft or after the time in which a reasonable man in the exercise of ordinary care would have discovered the loss or theft, the cardholder is not liable for any unauthorized use of the credit card.

(d) This section applies only to credit cards originally issued or renewed on or after the effective date of this section.

(Sec. 1718, as added by Laws 1969, A.B. No. 1763, Ch. 904, approved August 23, 1969, effective November 10, 1969.)

Sec. 1719 (Disclosure of Charges). Whenever fees, charges, or penalties are assessed against a cardholder for the use of a credit card, the card issuer shall separately state and label all such fees, charges and penalties.

The terms "credit card," "card issuer," and "cardholder" in this section shall have the same meaning as prescribed in Section 1718. (Sec. 1719, as added by Laws 1969, A.B. No. 1764, Ch. 905, approved August 23, 1969, effective November 10, 1969.)

#### CONNECTICUT

Sec. 1. (Acts 1969, P.A. No. 136) (Distribution of unsolicited credit cards.)

(a) No person, company, partnership or corporation shall engage in the practice of mailing or the distribution in any form of any credit card, charge plate or any like instrument or device to any other person, firm or corporation unless such other person, firm or corporation has previously made a request therefor in writing or verbally.

(b) Any person, company, partnership or corporation which violates the provisions of subsection (a) of this act shall be fined not more than one hundred dollars for each card, plate, instrument or device so mailed or distributed.

(c) The provisions of this act shall not apply to the renewal of any credit card, charge plate or like instrument or device unless the recipient has previously indicated in writing his intention that such renewal not be affected nor shall it apply to the replacement of any such instrument or device by the issuer thereof during the period such instrument or device is in effect. (Approved May 15, 1969, effective January 1, 1970.)

#### ILLINOIS

Credit Cards—Act of July 27, 1967.

Sec. 1. (Rev. Stat. 121½ Sec. 381) Unsolicited credit cards—Liability to issuer—Burden of proof—Fees and costs.

(a) No person in whose name a credit card is issued without his having requested or applied for the card or for the extension of the credit or establishment of a charge account that cardholder is liable to the issuer of the card for any purchases made or other amounts owing by a use of that card from which he or a member of his family or household derive no benefit unless he has indicated his acceptance of the card by signing or using the card or by permitting or authorizing use of the card by another. A mere failure to destroy or return an unsolicited card is not such an indication. As used in this Act, "credit card" has the meaning ascribed to it in Section 17-1 of the Criminal Code of 1951 (6381), except that it does not include a card issued by any telephone company that is subject to supervision or regulation by the Illinois Commerce Commission or other public authority.

(b) When an action is brought by an issuer against the person named on the card, the burden of proving the request, application, authorization, permission to use or benefit as set forth in Section 1 hereof shall be upon plaintiff if put in issue by defendant. In the event of judgment for defendant, the court shall allow defendant a reasonable attorney's fee, to be taxed as costs.

Sec. 2. (Rev. Stat. 121½ Sec. 382) Requested or accepted credit cards—Liability to issuer—Burden of Proof—Fees and Costs.

(a) Notwithstanding that a person in whose name a credit card has been issued has requested or applied for such a card or has indicated his acceptance of an unsolicited credit card, as provided in Section 1 (6835) hereof, such person shall not be liable to the issuer of the card for any amount hereinafter set forth, resulting from a use of that card from which he or a member of his family or household derives no benefit or which he has not authorized or permitted:

Card without signature panel .....	\$25.00
Card with signature panel .....	\$75.00

(b) When an action is brought by an issuer against the person named on a card, issuance of which has been requested, applied for, solicited or accepted and defendant puts in issue any transaction arising from the use of such card, the burden of proving

benefit, authorization, use or permission by defendant as to such transaction shall be upon plaintiff. In the event the defendant prevails with respect to any transaction so put in issue, the court may enter as a credit against any judgment for plaintiff, or as a judgment for defendant, a reasonable attorney's fee for services in connection with the transaction in respect of which the defendant prevails.

#### MARYLAND

##### Art. 83, Sec. 21B. (Unsolicited Credit Cards—Liability of Issuer—Renewals.)

When a credit card or card of identification for credit is issued to a person in the absence of a prior request or application for such card by that person or an authorized agent of that person, such card shall not be deemed to have been accepted until such person signifies acceptance in writing or uses such card to obtain credit. Until such acceptance takes place, the person issuing the card shall be presumed to have assumed the risk of the loss, theft, or unauthorized use in any action against the person to whom the card is issued. The provisions of this section shall not be applicable to cards issued to renew or replace existing cards originally applied for or accepted by the cardholder.

(Sec. 21B, as added by Laws 1969, Ch. 252, approved April 23, 1969, effective July 1, 1969.)

#### MASSACHUSETTS

##### Chap. 255, Sec. 12E (Credit Cards—Cardholder Liability)

(Series of definitions. Relevant definitions)

"Accepted Credit Card", any credit card which the cardholder has requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used. A credit card issued in connection with a merger, acquisition or the like of card issuers or credit card services in substitution for an accepted credit card shall be deemed to be an accepted credit card.

"A provision imposing liability on a cardholder for the unauthorized use of a credit card shall be effective only if the card is an accepted credit card, the liability imposed is not in excess of one hundred dollars, the card issuer gives adequate notice to the cardholder of the potential liability, the unauthorized use occurs before the cardholder has notified the card issuer of the loss or theft of the card or of any unauthorized use, and the card issuer has provided a method whereby the user of the credit card can be identified as the person authorized to use it, including without limitation a place on the card for the photo or signature of the holder.

"Except as hereinbefore provided, a cardholder incurs no liability from the unauthorized use of either an accepted or an unaccepted credit card."

(Sec. 12E, as added by Laws 1968, Ch. 394, approved—June 11, 1968, effective January 1, 1969, and applicable only to credit cards issued after the effective date.)

#### MINNESOTA

(Credit Card Liability)—Laws 1969, Ch. 1004. Approved June 6, 1969, effective June 7, 1969.

Sec. 2. (Unsolicited credit cards.) No person in whose name a credit card is issued shall be liable for any amount resulting from use of that card from which he or a member of his family or household derives no benefit unless he accepted the card by (1) signing or using the card, or (2) authorizing the use of the card by another. A mere failure to destroy or return an unsolicited credit card is not such an acceptance.

#### NEW MEXICO

##### (Credit Card Liability)—Laws 1969, Ch. 172.

Sec. 1. Unsolicited credit cards—Liability of issuer—Burden of proof—Attorney fee.

A. No person in whose name a credit card is issued is liable to the issuer of the credit card for any amount owing because of a use of the credit card if: (1) he did not apply for the credit card; or (2) he has not indicated his acceptance of the credit card; or (3) he or a member of his family or household derives no benefit from the use of the credit card. If the person named in the credit card has indicated his acceptance of the credit card by signing or using it or by permitting or authorizing another person to use it, he is liable to the issuer. The failure to destroy or return an unsolicited credit card is not an indication of acceptance.

B. In any action brought by the issuer against the person named in an unsolicited credit card, the burden of proving the application, authorization, permission to use or benefit is on the plaintiff if put in issue by the defendant. If the defendant prevails, the court shall award the defendant a reasonable attorney fee.

(Approved April 1, 1969, effective 12 o'clock noon, June 20, 1969.)

#### NEW YORK

##### General Business Law—Ch. 20, Art. 29-A. Credit Cards.

Sec. 1512. Limitations on liability for use of lost or stolen credit cards. A pro-

vision to impose liability on an obligor for the purchase or lease of property or services by use of a credit card after its loss or theft is only if it is conspicuously written or printed in a size at least equal to eight point bold type either on the card, or on a writing accompanying such a card when issued, or on a writing accompanying the card when issued or on the obligor's application for the card, and then only until written notice of the loss or theft is given to the issuer. Such a provision either in a credit card issued prior to the effective date of this article, or in a writing accompanying such a card when issued, or in the obligor's application for such a card is effective, on or after the effective date of this article, only if the issuer mails to the obligor, properly addressed, written notice of the provision conspicuously written or printed in a size at least equal to eight point bold type. Such a provision is effective only if the obligor has requested in writing the issuance of a credit card; the signature of the obligor or of a person authorized by him upon a sales slip or memorandum evidencing a purchase or lease of property or services by use of a credit card is the equivalent of the obligor's request in writing for the issuance of a new credit card and for the issuance of a new credit card to replace or renew a credit card previously issued to him.

#### **NORTH DAKOTA**

Credit Cards. Enacted by Laws 1969, S.B. No. 345, approved March 17, 1969, effective July 1, 1969.

Sec. 1. Definition of credit cards and other terms and imposition of liability on cardholder.

4. "Accepted credit card" means any credit card which the cardholder has requested in writing or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor or services on credit. A renewal credit card shall be deemed to be accepted if it is issued within one year after a prior card has been paid for or used. A credit card issued in connection with a merger, acquisition, or the like of card issuers or credit card services in substitution for an accepted credit card shall be deemed to be an accepted credit card."

7. "Unauthorized use" means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

A provision imposing liability on a cardholder for the unauthorized use of a credit card shall be effective only if the card is an accepted credit card, the liability imposed is not in excess of one hundred dollars, the card issuer gives adequate notice to the cardholder of the potential liability, and the unauthorized use occurs before the cardholder has notified the card issuer of the loss or theft of the card or of any unauthorized use.

#### **OHIO**

##### **Sec. 1319.01. (Unsolicited credit cards—Liability)**

A cardholder who receives a credit card from an issuer, which such cardholder has not requested nor used, shall not be liable for any use made of such credit card which has not been authorized by such cardholder, unless such credit card is in replacement or renewal of a credit card previously requested or used by the cardholder.

(Sec. 1319.01, as added by Laws 1969, S.B. No. 326, approved August 19, 1969, effective November 18, 1969.)

#### **SOUTH DAKOTA**

Laws 1968, H.B. No. 721, effective July 1, 1968.

Sec. 4. (Issuance—Unsolicited—Nonliability) No credit card shall be issued unless its issuance was requested nor shall any person who has not so solicited or has not accepted or utilized any unsolicited credit card be liable to the person who issued it or honored it for its misuse by others.

#### **WISCONSIN**

Sec. 895.45. Exemption from civil liability for lost or stolen credit cards. Notwithstanding any provision contained on a credit card, no person shall incur civil liability for the fraudulent use of a credit card by another, as defined in Sec. 943.41 which was used without the former's knowledge or consent.

(Sec. 895.45, as enacted by Laws 1967, Ch. 155)

#### **ATTORNEY GENERAL'S OPINION**

Washington. .02. Credit Cards. The regulatory provisions of the Credit Card Disclosure Act pertaining to maximum service charges, collection of delinquency charges, disclosure, etc., that apply to retail charge agreements as defined by the Act apply to situations where the holder of a bank card used the card to purchase goods or services from a participating vendor. Opinion of Attorney General of Washington. (February 8, 1968.)



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